

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

BETTY A. EVANS,

Plaintiff,

v.

Civil Action No.: 2:10-cv-945

Judge Thomas E. Johnston

**TRANS UNION, LLC, and
CHARLESTON AREA MEDICAL
CENTER, INC. d/b/a HEALTHCARE
FINANCIAL SERVICES,**

Defendants.

**PLAINTIFF’S RESPONSE IN OPPOSITION TO DEFENDANT CHARLESTON
AREA MEDICAL CENTER, INC.’S MOTION TO DISMISS AMENDED COMPLAINT**

On this day came the Plaintiff, Betty A. Evans, by counsel, Kevin Baker of the law firm Baker & Brown, PLLC, and responds in opposition to Defendant Charleston Area Medical Center, Inc.’s (“CAMC”) Motion to Dismiss Amended Complaint [Docket 26]. The Plaintiff respectfully requests that the Court deny CAMC’s motion.

In moving to dismiss the Amended Complaint, CAMC relies solely on the Memorandum of Law in Support of CAMC’s Motion to Dismiss the original Complaint [Docket 7]. In that memorandum, CAMC argued that the negligence claim against CAMC in the original Complaint was preempted by federal law, namely the Fair Credit Reporting Act (“FCRA”). In response, the Plaintiff relies on her Response in Opposition to Defendant CAMC’s Motion to Dismiss [Docket 11]. In particular, the Plaintiff reiterates that she seeks to hold CAMC responsible in negligence for negligently processing the Plaintiff’s insurance payment internally. Furthermore, the Plaintiff reasserts that if the Court determines that the Plaintiff’s negligence claim is preempted by the

FCRA, then the claim must be allowed to go forward because the Amended Complaint asserts that the actions of CAMC were taken with reckless disregard for the interests and rights of the Plaintiff, which satisfies the pleading requirement.

WHEREFORE, the Plaintiff, Betty A. Evans, respectfully requests that this Court deny CAMC's Motion to Dismiss Amended Complaint.

Respectfully submitted,

BETTY A. EVANS,
Plaintiff,
By Counsel,

/s/ Kevin Baker

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CERTIFICATE OF SERVICE

I, Kevin Baker, do hereby certify that I have this 2nd day of November, 2010, filed the foregoing Response to Defendant CAMC's Motion to Dismiss Amended Complaint with the CM/ECF system thereby serving an electronic copy upon the following counsel of record:

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